

**ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA
CONSUMER PROTECTION DIVISION**

**IN THE MATTER OF
FIRST CREDIT SERVICES, INC.**

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the State of North Carolina on relation of its Attorney General, Roy Cooper, pursuant to his powers under Chapter 75 of the North Carolina General Statutes, and First Credit Services, a New Jersey corporation.

STATEMENT OF PURPOSE

WHEREAS, First Credit Services, Inc. (hereinafter "First Credit"), is an accounts receivable management and debt collection agency that represents clients in the health and fitness industry. First Credit has its principal offices in Piscataway, New Jersey, and conducts business in numerous states, including North Carolina;

WHEREAS, during the period from January 29, 2010, through March 2, 2010, First Credit collected or attempted to collect debt from members and former members of Fitness Management Group Inc.'s (d/b/a "Peak Fitness") and/or Fuzion Investment Capital, LLC's (d/b/a "ZX Fitness") (collectively hereinafter "ZX Fitness") health clubs in North Carolina;

WHEREAS, the Attorney General has been investigating consumer complaints concerning aspects of the above-referenced debt collection, and First Credit has cooperated with the Attorney General in providing information and documentation responsive to the Attorney General's requests in an effort to reach a resolution regarding the outstanding complaints;

BACKGROUND

The Attorney General's concerns about First Credit's debt collection practices focused primarily, but not exclusively, upon allegations put forth in twenty-two (22) consumer

complaints from members and former members of Peak Fitness's and/or ZX Fitness's health clubs, which included allegations that First Credit was in violation of N.C. Gen. Stat. §§ 75-55(2), 58-70-115(2), and 58-70-115(5) as well as 15 U.S.C. 1692c § 805(b), U.S.C. 1692c § 805(3), 15 U.S.C. 1692d § 806(5), 15 U.S.C. 1692e § 807(2)(A), and/or 15 U.S.C. 1692f § 808(1).

First Credit's position is that all of its collection practices were lawful. First Credit, during the applicable and relevant timeframe, contends that it understood from ZX Fitness that the impacted consumers were contractually obligated to pay all or a portion of First Credit's fee for its collection efforts on behalf of ZX Fitness. Nevertheless, First Credit is willing to enter into the following terms and agreements in order to resolve the Attorney General's investigation.

GENERAL TERMS OF THE AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties have agreed to resolve the issues and concerns described in the paragraphs above by entering this Settlement Agreement and hereby agree as follows:

1. **No Admission of Liability.** The parties acknowledge that First Credit is entering into this Settlement Agreement solely for the purposes of settlement and that nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, or of any other matters of fact or law, or of any liability or wrongdoing.
2. **No Validation of Current Business Practices.** Acceptance of this Settlement Agreement by the Attorney General shall not be construed as or deemed to be an approval of any of First Credit's business practices.
3. **Release from Liability.** The Attorney General shall not institute any suit or proceeding against First Credit, its principals, directors, members, officers, representatives,

agents, successors, or assigns, with respect to conduct occurring prior to the date of this Settlement Agreement for First Credit's collection of debt collection fees from consumers on behalf of ZX Fitness during the relevant period. This Settlement Agreement does not affect the rights, if any, or the obligations, if any, that any individual or entity may have with respect to First Credit.

4. No Release from Federal and State Law. Nothing in this Settlement Agreement shall be construed as relieving First Credit of the obligation to comply with all state and federal laws, regulations or rules, or relieving First Credit from any existing or future liability under the laws, or from legal claims not set forth in this Agreement or as limiting the ability of the Attorney General or any other government entity from enforcing such provisions with respect to First Credit within the State of North Carolina.

5. Survival of Agreement. This Settlement Agreement shall be binding upon the Attorney General and upon First Credit, its principals, directors, members, officers, parent corporations, subsidiaries, employees, representatives, agents, successors, and assigns. Causes of action based upon the breach of this Agreement shall survive the execution of this Agreement.

6. Further Assurances. First Credit agrees, without waiving any applicable legal defenses that First Credit might have, to take such further action as the Attorney General shall reasonably request from time to time in connection herewith to evidence or give effect to the transactions contemplated hereby.

7. Accounting of Money Collected. First Credit attests that it has submitted, to the best of its knowledge and based upon its records, an accurate accounting of all money that it collected from consumers on behalf of ZX Fitness during the relevant period.

8. Future Consumer Complaints. If at any time following the execution of this

Agreement the Attorney General receives a complaint from a North Carolina consumer evidencing First Credit's collection of money from the consumer during the relevant period, and said collection of money is not accurately reflected in information submitted by First Credit, First Credit will submit payment of all money collected from the consumer to the Attorney General, who will adequately refund the consumer.

9. Modification. This Settlement Agreement may be modified only by a written instrument signed by or on behalf of the Attorney General and First Credit. The parties further acknowledge that this Settlement Agreement constitutes a single or entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable by a court of law, the remaining provisions shall continue in full force and effect.

10. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

11. Consent to Jurisdiction. The parties agree and stipulate that the Courts of the State of North Carolina have personal jurisdiction over First Credit in any dispute involving this Settlement Agreement as well as subject matter jurisdiction to enforce this Settlement Agreement and to issue any orders or directions as may be necessary and appropriate for the enforcement of this Settlement Agreement.

12. Authority to Execute Documents and Enforceability. Each of the parties represents that it has the power, authority and legal right to make, deliver, and perform the terms of this Agreement and all documents related to this Agreement.

SPECIFIC TERMS OF THE AGREEMENT

In order to resolve these issues, the parties have agreed and bound themselves as follows:

13. Compliance with State and Federal Laws. First Credit shall comply with N.C.

Gen. Stat. §§ 75-1.1 and 58-70-115(2), related federal regulations, and all other state and federal laws, as they currently exist or may be amended in the future.

14. Future Operations. First Credit shall establish, implement, and maintain systems and procedures reasonably calculated to ensure compliance with N.C. Gen. Stat. §§ 75-1.1 and 58-70-115(2), including but not limited to the following:

- a) Omit terms from all of First Credit's contracts for services provided in North Carolina which direct it to collect all or any portion of debt collection fees from consumers;
- b) Direct that all of its officers, agents, representatives, and employees ensure that all methods of drafting and collecting, including the specific fees drafted or collected, are permitted by the respective state law; and
- c) Conduct reasonable random monitoring of its officers, agents, representatives, and employees to ensure compliance with N.C. Gen. Stat. §§ 75-1.1 and 58-70-115(2), all federal and state law, and all requirements set out and agreed to in this document, as they currently exist or may be amended in the future.

15. Future Monitoring. The Attorney General is authorized to monitor First Credit's compliance with this Settlement Agreement by all lawful means and nothing in this Settlement Agreement shall limit the right of the Attorney General to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

16. Consumer Education & Law Enforcement Payment. First Credit shall pay the total sum of **\$4,000** to the Attorney General to be used for attorney fees, investigative costs, consumer education, enforcement, or other consumer protection purposes at the discretion of the Attorney General. First Credit shall pay the amount set forth above via check(s) payable to the

North Carolina Department of Justice on or before August 15, 2014.

17. Consumer Restitution. First Credit shall pay the total sum of \$9,961.53 to the Attorney General to be refunded to consumers as compensation for the amount each consumer paid to First Credit in excess of the amount that the consumer owed to ZX Fitness. Any unclaimed amount will be used for the purposes specified in paragraph 16 above. First Credit shall pay the amount set forth above via check(s) payable to the North Carolina Department of Justice on or before August 15, 2014.

18. Transfer of Funds Collected on Behalf of ZX Fitness. First Credit shall pay the total sum of \$101,850.59 to the Attorney General to be used for consumer restitution related to the business practices of ZX Fitness, at the conclusion of the Attorney General's investigation of such business practices. Any unclaimed amount will be used for the purposes specified in paragraph 16 above. First Credit shall pay \$69,215.63 of this amount via check(s) payable to the North Carolina Department of Justice on or before August 15, 2014. First Credit shall pay the remaining \$32,634.96 via check(s) payable to the North Carolina Department of Justice as follows: \$16,317.48 on or before August 25, 2014 and \$16,317.48 on or before September 25, 2014.

19. No Compensation for Unlawful Services Retained. First Credit will not retain any amount as compensation for the performance of the alleged unlawful collection activity, or any other cost (including but not limited to the costs of sending letters, telecom charges, manpower wages, etc.) involved in the alleged unlawful collection activity.

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENT OF THE FOREGOING SETTLEMENT AGREEMENT.

SIGNATURE PAGE ATTACHED

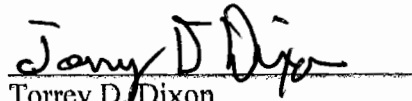
This 15th day of August, 2014.

First Credit Services, Inc.
(A New Jersey Corporation)



Rajesh Chhabria
Chief Executive Officer for First Credit

ROY COOPER
Attorney General of North Carolina



Torrey D. Dixon
Assistant Attorney General